

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 AVETIS ARCHANIAN,

4 Petitioner,

5 v.

6 WILLIAM GITTERE, *et al.*,

7 Respondents.

Case No. 3:19-cv-00177-APG-CLB

**ORDER GRANTING MOTION FOR
STAY (ECF NO. 15) AND DENYING
MOTION FOR EQUITABLE TOLLING
(ECF NO. 16)**

8
9 Petitioner Avetis Archanian has filed a motion requesting that this capital habeas corpus
10 action be stayed while he exhausts claims in state court. ECF No. 15. I will grant that motion
11 and stay this case while Archanian completes his state-court litigation. Archanian has also filed
12 a motion requesting equitable tolling of the applicable limitation period. ECF No. 16. I will deny
13 that motion without prejudice to Archanian requesting equitable tolling if the respondents file a
14 motion to dismiss based on the statute of limitations.

15 Archanian's case arose from the robbery and murders of Elisa Del Prado and her mother,
16 Juana Quiroga, in the back room of a jewelry store in Las Vegas. Archanian was convicted in
17 Nevada's Eighth Judicial District Court of two counts of first-degree murder with the use of a
18 deadly weapon of a victim 65 years of age or older, and two counts of robbery with the use of a
19 deadly weapon of a victim 65 years of age or older. *See Archanian v. State*, 145 P.3d 1008, 1013
20 (Nev. 2006). He was sentenced to death for the murders, and for the robberies he was sentenced
21 to four consecutive terms of 72 to 180 months in prison. *See id.*

22 After an unsuccessful direct appeal and state habeas action, Archanian initiated this
23 federal habeas corpus action on March 29, 2019. On March 30, 2019, I appointed the Federal

1 Public Defender for the Eastern District of California to represent Archanian. ECF No. 6. On
2 October 17, 2019, with counsel, Archanian filed an amended habeas petition. ECF No. 14.

3 Archanian filed his motion for stay on October 22, 2019. ECF No. 15. He states that he
4 has filed a second state habeas action, and he requests a stay of this action pending the
5 completion of that proceeding. *See* ECF No. 15, p. 2 n.1. The respondents do not oppose the
6 motion for stay. *See* ECF No. 18.

7 In *Rhines v. Weber*, 544 U.S. 269 (2005), the United States Supreme Court circumscribed
8 the discretion of federal district courts to impose stays to facilitate habeas petitioners' exhaustion
9 of claims in state court.

10 [S]tay and abeyance should be available only in limited circumstances. Because
11 granting a stay effectively excuses a petitioner's failure to present his claims first
12 to the state courts, stay and abeyance is only appropriate when the district court
13 determines there was good cause for the petitioner's failure to exhaust his claims
14 first in state court. Moreover, even if a petitioner had good cause for that failure,
the district court would abuse its discretion if it were to grant him a stay when his
unexhausted claims are plainly meritless. *Cf.* 28 U.S.C. § 2254(b)(2) ("An
application for a writ of habeas corpus may be denied on the merits,
notwithstanding the failure of the applicant to exhaust the remedies available in
the courts of the State").

15 * * *

16 [I]t likely would be an abuse of discretion for a district court to deny a stay and to
17 dismiss a mixed petition if the petitioner had good cause for his failure to exhaust,
18 his unexhausted claims are potentially meritorious, and there is no indication that
the petitioner engaged in intentionally dilatory litigation tactics. In such
circumstances, the district court should stay, rather than dismiss, the mixed
petition.

19 *Rhines*, 544 U.S. at 277-78.

20 *Rhines* does not state or suggest that every unexhausted claim in the petition must satisfy,
21 individually, the "good cause" and "potentially meritorious" requirements for a stay. If a stay is
22 warranted with respect to any single claim, the court need not conduct a claim-by-claim analysis
23 regarding the remaining claims. In considering Archanian's motion for stay, I focus on Claim 1

1 of his amended petition, a claim that a juror committed misconduct by failing during voir dire to
2 reveal that he had a prior acquaintance with Archanian. *See* ECF No. 14 at 17-23; ECF No. 15 at
3 4, 6.

4 Archanian concedes that Claim 1 is unexhausted in state court. *See* ECF No. 14 at 14;
5 ECF No. 27 at 4. Therefore, Archanian’s amended petition is a “mixed petition,” meaning it
6 contains both exhausted and unexhausted claims. A federal court may not grant habeas corpus
7 relief on a claim not exhausted in state court. 28 U.S.C. § 2254(b). The exhaustion doctrine is
8 based on the policy of federal-state comity, and is intended to allow state courts the initial
9 opportunity to correct constitutional deprivations. *See Picard v. Conner*, 404 U.S. 270, 275
10 (1971).

11 Archanian asserts that the attorney who handled his first state habeas action performed
12 ineffectively by failing to present the claim. ECF No. 15 at 3-5. In *Martinez v. Ryan*, 566 U.S. 1
13 (2012), the Supreme Court held that “[w]here, under state law, claims of ineffective assistance of
14 trial counsel must be raised in an initial-review collateral proceeding, a procedural default will
15 not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if,
16 in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding
17 was ineffective.” *Martinez*, 566 U.S. at 17. In *Blake v. Baker*, the Ninth Circuit held that the sort
18 of ineffective assistance of counsel in an initial-review collateral proceeding described in
19 *Martinez* can be good cause for a *Rhines* stay. *See Blake*, 745 F.3d at 977, 982-84 (9th Cir.
20 2014). Archanian has shown good cause for his failure to exhaust Claim 1 in state court.
21 Further, that Claim 1 is at least potentially meritorious. And, there is no showing that Archanian
22 has engaged in intentionally dilatory litigation tactics. Therefore, Archanian has satisfied the
23 requirements for a stay of this action pending exhaustion of his claims in state court.

1 In exercising my discretion to grant the stay, I take into account *Crump v. Warden*, 934
2 P.2d 247 (1997), under which there is a possibility that the Nevada courts may consider, on their
3 merits, Archanian's unexhausted claims upon a showing of ineffective assistance of his prior
4 post-conviction counsel.

5 My intention is that this will be the last time this case is stayed to facilitate Archanian's
6 exhaustion of claims in state court. Archanian must exhaust all his unexhausted claims in state
7 court during the stay imposed under this order.

8 Turning to Archanian's motion for equitable tolling, a prospective ruling on the question
9 is unwarranted. The limitation period applicable to federal habeas corpus actions (*see* 28 U.S.C.
10 § 2244(d)) is subject to equitable tolling. A habeas petitioner is entitled to equitable tolling if the
11 petitioner shows "'(1) that he has been pursuing his rights diligently, and (2) that some
12 extraordinary circumstance stood in his way' and prevented timely filing." *Holland v. Florida*,
13 560 U.S. 631, 649 (2010) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)); *Ramirez v.*
14 *Yates*, 571 F.3d 993, 997 (9th Cir. 2009).

15 Archanian states that he timely filed his amended petition but he requests 163 days of
16 equitable tolling, to March 28, 2020, to file a second amended petition. Archanian states that
17 equitable tolling is warranted to compensate for time before this action was initiated during
18 which he did not have counsel. He asserts he needs the additional time to review evidence in the
19 possession of the Las Vegas Metropolitan Police Department (LVMPD) and to obtain an
20 evaluation by a neuropsychologist.

21 There is currently no limitation issue in this case. The respondents have asserted no such
22 defense at this point. There does not appear to be any controversy regarding the timeliness of the
23 claims in Archanian's amended petition. Furthermore, Archanian has provided no analysis

1 whether any new or amended claims in a potential second amended petition would relate back to
2 claims in the current amended petition, rendering them timely. And Archanian does not explain
3 why he could not have articulated any particular claim in his amended petition without access to
4 the evidence in the possession of the LVMPD or without the evaluation by the
5 neuropsychologist. Archanian's motion for equitable tolling is premature and does not show that
6 an extraordinary circumstance prevented his timely filing any claim. I will deny his motion for
7 equitable tolling without prejudice to him requesting equitable tolling in response to any motion
8 to dismiss by the respondents based on the statute of limitations.

9 I THEREFORE ORDER that petitioner Avetis Archanian's Motion for Stay (**ECF No.**
10 **15) is GRANTED.** This action is stayed while Archanian exhausts in state court his
11 unexhausted claims for habeas corpus relief.

12 I FURTHER ORDER that, on or before **June 15, 2020**, Archanian shall file a status
13 report describing the status of his state-court proceedings. Thereafter, during the stay of this
14 action, Archanian shall file such a status report every six months (on or before December 15,
15 2020; June 15, 2021; etc.). The respondents may, if necessary, file a response to any such status
16 report within 15 days after it is filed. If necessary, Archanian may reply within 15 days of the
17 filing of the response.

18 I FURTHER ORDER that, within 30 days of the conclusion of Archanian's state court
19 proceedings, Archanian shall move to lift the stay.

20 I FURTHER ORDER that this action will be subject to dismissal upon a motion by the
21 respondents if Archanian does not comply with the time limits in this order, or if he otherwise
22 fails to proceed with diligence during the stay imposed under this order.

1 I FURTHER ORDER that Archanian's Motion for Equitable Tolling (**ECF No. 16**) is
2 **DENIED** without prejudice to Archanian requesting equitable tolling in response to any motion
3 to dismiss by the respondents based on the statute of limitations.

4 Dated: December 3, 2019.



5 ANDREW P. GORDON
6 UNITED STATES DISTRICT JUDGE
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